Due service and receipt of a copy of the within is hereby admitted

this ..... *day of May, 1942.*

_____

United States Attorney,

_____

Assistant Attorney General of the United States,

_____

Solicitor General of the United States,

Counsel for Respondent.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Argument	5
Conclusion	8

CITATIONS

Cases:

Gouax v. *Bovay*, 105 F. 2d 256 — 8

Louisville Bridge Commission v. *United States*, 89 C. Cls. 493 — 8

Matter of Johnson, 167 Cal. 142 — 6

Southern Pacific Co. v. *Olympian Dredging Co.*, 260 U. S. 205 — 7, 8

United States v. *Columbia River–Longview Bridge* Co., 99 F. 2d 287 — 8

Statutes:

Act of July 5, 1884, sec. 6, c. 214, 23 Stat. 103, 104 (10 U. S. C. sec. 1348) — 2

Act of March 3, 1899, sec. 9, c. 425, 30 Stat. 1151 (33 U. S. C. sec. 401) — 3

Act of March 23, 1906, sec. 2, c. 1130, 34 Stat. 84 (33 U. S. C. sec. 492) — 8

Act of February 11, 1936, sec. 1, c. 48, 49 Stat. 1108 — 2

462833—42

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1235

GOLDEN GATE BRIDGE AND HIGHWAY DISTRICT OF CALIFORNIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 165–183) is reported in 37 F. Supp. 505. The opinion of the Circuit Court of Appeals (R. 236–245) is reported in 125 F. (2d) 872.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 16, 1942 (R. 246). A petition for rehearing was denied April 10, 1942 (R. 246). The petition for writ of certiorari was filed May 14, 1942. Jurisdiction of this Court is in-

voked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the permit issued by the Secretary of War granting petitioner the use of lands needed for the erection of the bridgeheads and highway approaches of the Golden Gate Bridge at San Francisco, California, requires petitioner to allow free use of the bridge not merely to traffic of the Army and Navy but to all traffic of the Government.

STATUTES INVOLVED

Section 6 of the Act of July 5, 1884, c. 214, 23 Stat. 103, 104 (10 U. S. C. sec. 1348), provides:

> The Secretary of War shall have authority, in his discretion, to permit the extension of State, county, and Territorial roads across military reservations; to permit the landing of ferries, the erection of bridges thereon; and permit cattle, sheep or other stock animals to be driven across such reservation, whenever in his judgment the same can be done without injury to the reservation or inconvenience to the military forces stationed thereon.

Section 1 of the Act of February 11, 1936, c. 48, 49 Stat. 1108, provides, in part:

> That there is hereby granted to the State of California a retrocession of jurisdiction

over the rights-of-way covered by a certain grant from the Secretary of War to the Golden Gate Bridge and Highway District, of California, dated February 13, 1931, to extend, maintain, and operate State roads across the Presidio of San Francisco Military Reservation and the Fort Baker Military Reservation, as heretofore or hereafter amended by the Secretary of War, subject to all of the terms and conditions contained in said permit as so granted and any amendments thereof as aforesaid * * *.

STATEMENT

The Golden Gate Bridge, constructed by petitioner, spans the entrance to San Francisco Bay, extending from the Presidio of San Francisco Reservation, an army post, to the Fort Baker Reservation, another army post (R. 185). The ends of the bridge and its highway approaches occupy more than 162 acres of land within the two reservations (R. 191). The use of this land was granted to petitioner by the Secretary of War pursuant to section 6 of the Act of July 5, 1884, c. 214, 23 Stat. 103, 104 (10 U. S. C. sec. 1348).[1]

[1] Since the bridge was constructed over navigable waters, the plans had to be approved by the Chief of Engineers and the Secretary of War. Act of March 3, 1899, sec. 9, c. 425, 30 Stat. 1151 (33 U. S. C. sec. 401). On May 1, 1930, petitioner applied for such approval (R. 100–112); it was accorded by the Chief of Engineers on August 9, 1930, and by the Secretary of War two days later (R. 188).

Acting under that statute, the Secretary first issued to petitioner a permit granting use of the land, which provided (R. 122):

> 6. That Government traffic, and all military and naval personnel and their dependents, and all civilians traveling under proper military authority shall have use of the bridge and roads free of charge.

On the ground that this provision might be construed as conferring "unlimited authority to issue passes" (R. 134), petitioner asked the addition thereto of the words inserted between the following brackets (R. 142):

> That Government traffic, and all military and naval personnel and their dependents, and all civilians traveling under proper military authority [on government business] shall have use of the bridge and roads free of charge.

On February 16, 1931, the Secretary isued the permit here involved. It provides (R. 150):

> 6. That civilian employees of the Army and Navy traveling on government business under proper military authority, and government traffic, and all military and naval personnel and their dependents, shall have the use of the bridge and roads free of charge.[2]

---

[2] Paragraph 11 of the first permit provided *inter alia* that the permit should not be effective until the State of California applied to Congress for a retrocession of jurisdiction over the lands covered by the permit and agreed to regulate

The bridge was opened May 28, 1937 (R. 191). On November 13, 1937, petitioner commenced to collect tolls on all government traffic except that of the Army and Navy (R. 192). On October 14, 1938, the United States filed in the District Court of the United States for the Northern District of California, Southern Division, a complaint for a declaratory judgment (R. 2–13). On June 18, 1941, the District Court entered judgment declaring that under the terms of the permit all government traffic is entitled to use the Golden Gate Bridge free of charge (R. 202–204). The Circuit Court of Appeals affirmed (R. 245–246).

ARGUMENT

1. Petitioner contends (Pet. 28–29) that the term "government traffic" means only Army and Navy traffic, arguing that the term was inserted to cover the vehicles and baggage of the two other toll-free classes specified in the permit: authorized civilian employees of the Army and Navy travelling on government business, and military and naval personnel and their dependents. The unnatural character of this construction is patent. It is urged by petitioner on the ground that "government traffic" is a general term, and

---

traffic on the bridge and approaches, subject to conditions respecting free use of the bridge similar to those contained in paragraph 6 (R. 123–124). At petitioner's request (R. 135, 145), the conditions specified in paragraph 11 were modified to conform to the change in paragraph 6 (see R. 152–153).

since that term follows the specification of a class limited to Army and Navy employees the scope of "government traffic" must be limited correspondingly. Cf. *Matter of Johnson*, 167 Cal. 142, 145. Petitioner's argument and citations are inept in view of the earlier version of the permit, in which "government traffic" preceded the other exempt categories.

Petitioner urges that the interpretation of the term reached by the courts below, for which the Government contended, rendered unnecessary the inclusion in the permit of the first category (civilian employees). This was not true as the permit originally stood, since it then appeared to empower the appropriate military authority to authorize any civilians to cross the bridge without toll for any purpose. At petitioner's suggestion the permit was amended to restrict the civilian category to its present substance. It is obvious from this history that there was no intention to restrict the meaning of "government traffic" by the amendment. The term retained its ordinary comprehensive meaning, as held by the courts below.

2. Petitioner contends in this Court (Pet. 24–26) that the Secretary of War was without statutory authority to condition the permit on toll-exemption. It had raised this question in the District Court, also challenging there the power

of Congress to authorize insertion of the conditions (see R. 172, 174). In the Circuit Court of Appeals petitioner abandoned the argument that the Secretary lacked power to condition (C. C. A. Br. 3, 4, 16, 45). The court below did not consider the argument or pass on it (see R. 240). Petitioner now urges the argument except so far as it relates to the conditions requiring toll-exemption for Army and Navy traffic (Pet. 21).[3] Under these circumstances we think that the question of the Secretary's authority is not properly presented and therefore does not warrant review.

In any event, the argument made by petitioner is without merit, regardless of the illogic of its separation of the conditions with respect to the Secretary's power to impose. Since the Secretary of War was invested with discretionary authority to grant or refuse the permit, he was plainly authorized to impose reasonable and pertinent conditions such as those imposed here. Cf. *Southern Pacific Co.* v. *Olympian Dredging Co.*,

[3] Petitioner states (Pet. 21) that its abandonment of the argument below was only partial, and that it took the position which it takes in this Court. However, any contention that the Secretary exceeded his authority is totally absent from petitioner's specification of errors (C. C. A. Br. 5) and brief (C. C. A. Br. 15–16, 17–45) in the court below.

260 U. S. 205, 209–210.[4] Any shadow of doubt is removed by the fact that Congress in the Act of February 11, 1936, 49 Stat. 1108, retroceding jurisdiction over the bridge lands to California, specifically ratified the terms and conditions contained in the permit now contested.[5]

CONCLUSION

The decision of the Circuit Court of Appeals is clearly correct. It does not raise a question of

---

[4] There is clearly no conflict, as alleged (Pet. 12, 13–14, 26–27) between the decision below and *United States* v. *Columbia River-Longview Bridge Co.*, 99 F. (2d) 287 (C. C. A. 9); *Gouax* v. *Bovay*, 105 F. (2d) 256 (C. C. A. 5); and *Louisville Bridge Commission* v. *United States*, 89 C. Cls. 493. These cases merely hold that the provision of section 2 of the Act of March 23, 1906, c. 1130, 34 Stat. 84 (33 U. S. C. sec. 492), declaring that no higher charge should be made for carriage of troops and munitions over a bridge spanning navigable waters than the rate per mile paid for transportation over the public highway leading to the bridge did not permit the Army to use such bridges free of charge when no charge was made for use of the public highway.

In the *Gouax* case, the court said (105 F. (2d) at 257): "where Congress grants no land and gives no other special aid to the enterprise it is not to be supposed that a free use by the United States of the privately owned structure has been demanded." Here the United States granted petitioner the land necessary for construction of the Golden Gate Bridge and its approaches.

[5] The effectiveness of the congressional statute was conditioned in its section 3 on acceptance by the California legislature. This had already been given, contingent upon enactment of the federal act. See R. 160–162.

importance, and presents no conflicts. It is therefore respectfully submitted that the petition should be denied.

CHARLES FAHY,
Solicitor General.
NORMAN M. LITTELL,
Assistant Attorney General.
JOHN F. COTTER,
LEONARD C. MEEKER,
Attorneys.

MAY 1942.

U. S. GOVERNMENT PRINTING OFFICE: 1942